

## WOMEN'S RIGHTS VIOLATIONS IN THE PRACTICE OF VIRGINITY TESTING CONDUCTED BY THE INDONESIAN NATIONAL ARMED FORCES AND THE INDONESIAN NATIONAL POLICE FORCE

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### Abstract

Virginity testing is a practice that is discriminatory, degrading to the honor and dignity of women, and is also a violation of human rights, which is carried out by the Indonesian National Police (*POLRI*) towards female police officer candidates as well as the Indonesian National Armed Forces (*TNI*) towards female soldier candidates. Therefore, two problems arise in this research, namely what kind of obligations and responsibilities does Indonesia have in regards to providing legal protection for women according to international law, and how is the legality of the practice of the virginity tests carried out by *POLRI* and *TNI* according to international law. This study uses a qualitative, normative-legal approach. The result of this study are as follows: The obligations and responsibilities that Indonesia has in regards to providing legal protection for women is mandated by Article 7 of UDHR, Article 4 letters d, e, f, and l of Declaration on the Elimination of Violence Against Women (DEVAW), Article 2 letters a, b, c, and f of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as Article 3 and Article 26 of the International Covenant on Civil and Political Rights (ICCPR). In regards to the legality of the virginity tests carried out by *POLRI* and *TNI*, such practice violates article 1, article 2, article 5 of Universal Declaration of Human Rights (UDHR), article 1, article 2 section (3), article 3, and article 4 letter b of DEVAW, article 1 and article 2 letter d of CEDAW, article 7 of ICCPR, as well as article 16 and article 10 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

**Keywords:** International Law, Women's Rights, Virginity Test

## INTRODUCTION

Human rights are freedoms that are inalienable rights which cannot be infringed upon. Day by day, more and more issues with injustice that infringes on a person's human rights come to light. Despite the extensive human rights law. Women are frequently viewed as second-class citizens in Indonesian society, which adheres to a patriarchal structure in most cases. This is due to the perception that men are always better than women. Also, there are social beliefs that claim women are naturally weak and dependent on men to survive. Women are frequently treated in ways that are not acceptable; examples include discrimination, persecution, not paying attention to political viewpoints, and more. Human rights highlight that all people should be treated equally regardless of their gender, nationality, ethnicity, race, religion, language, or other status, and this is an obvious breach of those rights. Virginity tests, which are administered by the Indonesian National Police (*POLRI*) for female police applicants (*polwan*) and the Indonesian National Armed Forces (*TNI*) for female military candidates, are one type of discriminatory practices against women (Dewi, 2022)

A two-finger test is one of the virginity testing procedures used to determine whether the hymen (hymen) of potential policewomen or potential soldiers is still intact. The aim is to examine the hymen and determine if it provides any clues about past sexual behavior. In truth, according to physicians and scientists, no test can reliably tell if a woman has had intercourse or is a virgin. The hymen can also tear or stretch as a result of various activities, such as sports or medical procedures, making the "two-finger test" conducted by *POLRI* and *TNI* an obsolete and discriminatory practice.

Because it contravenes the provisions of the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Declaration on the Elimination of Violence Against Women (DEVAW), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the practice of virginity testing is regarded as discriminatory. Although the virginity test does not apply to men, it is nevertheless discriminatory against women and prevents men and women from having equal opportunity to join the police or military. Health professionals are not required to perform "virginity tests," according to a World Health Organization (WHO) guidebook published in November 2014 titled "Health care for women victim to intimate relationship abuse or sexual violence" (Organization, 2022).

This book focuses on the medical treatment that women need, highlights the need of prioritizing women's human rights and comfort, and stresses that any physical examination should only be conducted with agreement. The book also comes to the conclusion that despite the test's lack of a scientific foundation, the derogatory "virginity test" or "two-finger test" is still used to "confirm" females' virginity in various nations, including Indonesia (Human Rights Watch).

This article will explore Indonesia's obligations and liabilities under international law to provide women with legal protection. In addition, this article analyzes the legality of *POLRI* and *TNI*'s virginity testing practices in light of international law.

## RESEARCH METHOD

This study employs normative juridical research techniques, which involve studying secondary data from the literature. The research focuses on document studies, which means employing data sources like rules, customs, legal theories, and opinions from top scholars that are then connected to the concerns that are the topic of the research.

## RESULTS AND DISCUSSION

### Indonesia's Obligations and Responsibilities in Providing Legal Protection Against Women According to International Law

The state's function in defending human rights, especially the safety of women, is crucial. Both national and international law control the duties and responsibilities of the state to protect women's rights and human rights. According to Article 28I Paragraph (4) of the 1945 Constitution and Article 71 of Law No. 39/ 1999 on Human Rights (*UU HAM*), both are part of the Indonesian Constitution. The 1945 Constitution's Article 28I, Paragraph 4 underlines that the state, particularly the government, is responsible for the preservation, promotion, upholding, and fulfillment of human rights. According to Article 71 of the Human Rights Law, the government is in charge of ensuring that the rights guaranteed by the Human Rights Law, other laws and regulations, and the international human rights law that the Republic of Indonesia has ratified are respected, protected, upheld, and promoted.

Women's rights should not be given second priority in the state's duty to respect, safeguard, and uphold human rights because they are an essential and inseparable component of such rights. Since September 28, 1950, Indonesia has been a member of the UN. Indonesia is required to abide by a number of international legal instruments concerning human rights and the protection of women as a

result of Indonesia's membership in the UN, including UDHR and DEVAW. Also, Indonesia has ratified a number of international legal instruments that enhance women's rights and protection, including CEDAW, and ICCPR. Not only that, but the provisions in Article 71 of the Human Rights Law itself stress that the government has a duty and responsibility to respect, preserve, uphold, and advance the human rights governed by international law with regard to the human rights recognized by the Republic of Indonesia. In this context, the UDHR, DEVAW, CEDAW, and ICCPR, which offer legal protection for women, are considered to be "international legislation on human rights acknowledged by the Republic of Indonesia." The obligations and responsibilities of state parties to safeguard women are governed by a variety of articles in various international legal treaties.

Secondly, Article 7 of the UDHR declares that everyone has a right to equal protection under the law without discrimination and that everyone is equal before the law. Every kind of discrimination that violates the UDHR and any incitement to such discrimination must be protected equally by all. (All people are treated equally by the law and are entitled to that protection without distinction. All people have the equal right to protection from any discrimination that violates this Declaration and from any instigation to such discrimination.) (UDHR) This means that everyone has a right to the same legal protection without experiencing any form of discrimination, regardless of their gender, and that Indonesia, as a state that is bound by the UDHR, has a duty and responsibility to uphold this legal protection, including the legal rights of women.

Moreover, DEVAW demands state parties to denounce all kinds of violence against women and places a specific obligation on the state to protect women. Governments are required to denounce violence against women and may not evade their responsibilities to end it by invoking customary, traditional, or religious factors. The state must immediately implement a strategy to end violence against women. This is governed by letters d, e, f, and l of article 4 of the DEVAW, which require the state to:

- a. Develop penal, civil, labor and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- b. Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;
- c. Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- d. Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence.

The fact that Indonesia ratified CEDAW in 1984 implies that Indonesia is now obligated by the agreement and has a responsibility to create various laws to end discrimination against women. The Convention on the Elimination of Discrimination Against Women (CEDAW) mandates that nations that ratify it adopt provisions and principles to end sexism in all its forms, including the subordination of women, social disparities between men and women, and civil and political actions. These actions include actions in policies, laws, and regulations (Maryam, 2012). In actuality, ratifying CEDAW binds every nation that did so, and they are now required to create a number of laws to end discrimination against women (Sihite, 2007). In written, obligation of the member states of CEDAW is to protect women, which stipulates in Article 2 a, b, c and f, which states:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- a. To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- b. To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- c. To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.
- d. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women

Finally, Indonesia's obligations and responsibilities in providing legal protection for women are also regulated by the ICCPR, particularly in articles 3 and 26, which read:

Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 26:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In light of this, state parties pledge to guarantee and provide non-discriminatory protection for both men and women for a variety of civil and political rights, such as the right to be free from torture and other inhumane treatment, the right to freedom and personal security, and the right to recognition and equal treatment before the law, in accordance with article 3 of the ICCPR. Accordingly, it is evident from article 26 of the ICCPR that the legal protection required by the treaty also includes legal protection for women. This is because the state has a duty and responsibility to ensure non-discriminatory legal protection as well as equal and effective protection for everyone against discrimination on any basis, including gender, race, language, and others.

Indonesia is bound by these international legal instruments and has an obligation to do so in good faith. This is regulated by Article 26 of the 1969 Vienna Convention which affirms "Every treaty in force is binding upon the parties to it and must be performed by them in good faith". This is the principle of *Pacta sunt servanda*. Indonesia has recognized and accepted the *Pacta sunt servanda* principle through Article 4 paragraph (1) of Law Number 24 of 2000 concerning International Agreements, which reads:

The Government of the Republic of Indonesia enters into international agreements with one or more countries, international organizations, or other subjects of international law under the agreement, and the parties are obliged to enforce such agreements in good faith.

By ratifying these international legal instruments, Indonesia has also shown that it is willing to abide by them. According to international customary law, which stipulates those international treaties have binding power, Indonesia is also bound by these international legal instruments.

### **Legality of Virginitly Test Practices Conducted by the Indonesian National Police and TNI According to International Law**

Virginitly testing is regarded as discriminatory, is an insult to and a kind of aggression towards women, breaches their privacy, diminishes their worth, and has the ability to harm their physical and mental well-being. Hence, the use of virginitly testing is against many international legal treaties, including as the UDHR, DEVAW, CEDAW, ICCPR, and CAT (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

These international agreements have all been ratified by Indonesia, including the ICCPR through Law of the Republic of Indonesia Number 12 of 2005 concerning Ratification of the ICCPR, CEDAW through Law Number 7 of 1984 concerning Ratification of the CEDAW, and CAT through the Law of the Republic of Indonesia Number 8 of 1998 concerning Ratification of the CAT. Both the UDHR and DEVAW are international declarations, hence they cannot be approved. Indonesia must still comply with both declarations, though. In accordance with letter d of the provisions of the *UU HAM*, which is a manifestation of the UDHR, states:

That the Indonesian nation as a member of the United Nations bears a moral and legal responsibility to uphold and implement the Universal Declaration of Human Rights established by the United Nations, as well as various other international instruments regarding human rights that have been acceded to.

### **The Practice of Virginitly Tests Conducted by POLRI and TNI according to: UDHR**

It should be kept in mind that Indonesia is still subject to the UDHR even though it has not been ratified. This is so that Indonesia, a UN member, is immediately covered by the UDHR. An international agreement that is generic in character and simply contains the essentials is typically referred to as a declaration in the framework of international treaty law. However, there are still statements that include substantially binding legal ideas. The UDHR is one illustration of a declaration with legally binding principles. Since the UDHR is an essential pillar of the UN Charter, it applies to all 193 UN Charter

parties, including the State of Indonesia. The UDHR is largely binding, upheld, and respected by UN members, and it is reflected in the national laws of the relevant countries. UDHR is therefore "international custom, which is established to be a general practice recognized as law" (international custom, as evidence of a general practice accepted as law). The UDHR is in accordance with the international legal principles *pacta sunt servanda*, despite not having been prepared as a treaty, and as such satisfies the requirement that it be considered one of the "universal principles of law recognized by civilized states" (general principles of law recognized by civilized nations). developed countries). Because it is a standard that is accepted and acknowledged by the international community, the UDHR is *Jus Cogens* (peremptory norm of general international law). Last but not least, Indonesia, a nation that did not actively take part in the 1948 UDHR formation process but has been a member of the UN since 1950, feels obligated to uphold the 1948 UDHR (Amanwinata, 2000). According to Indonesia's obligation to uphold the UDHR, the *POLRI* and *TNI*'s practice of conducting virginity tests infringes on a number of UDHR clauses.

Forcible hymen examinations for prospective *Polwan* and female soldier candidates are part of the *POLRI* and *TNI*'s virginity testing procedures; this is harsh, cruel, or humiliating treatment, which is against the UDHR's intent and is forbidden. According to Article 1 of the UDHR, everyone has the same rights and is born free. They ought to get along with one another in brotherhood because they are gifted with reason and conscience. Virginity tests violate Article 1 of the UDHR by limiting the dignity and rights of women, which should be equal for all people.

Everyone has the right to all of the freedoms and rights outlined in the UDHR, according to Article 2 of the document, without exception for any factor, including race, color, sex, language, religion, political opinion, national or social origin, property rights, birthplace, or other circumstances. According to this clause, women have the same human rights as men, including those outlined in Article 5, which forbids torture, cruel treatment, and other forms of inhumane or degrading punishment or treatment. Being required to undergo physically demanding virginity tests as a requirement of a career as a policewoman or soldier is cruel and insulting, especially when such tests are given to women.

Additionally, Article 12 of the UDHR forbids arbitrary interference with one's privacy and assaults on one's honor and reputation. It states that no one shall be subject to arbitrary interference with his or her private affairs, family, household, or correspondence, and that it is also prohibited to violate one's honor and good name. Everyone has a right to legal defense from these annoyances or violations. The virginity test is a flagrant breach of Article 12 since it substantially invades women's privacy and is used to cast doubt on their honor and reputation.

## DEVAW

DEVAW also applies to Indonesia despite not being ratified, much like the UDHR which is a declaration. This is so because Indonesia is automatically covered by DEVAW. Indonesia is automatically governed by DEVAW because it is a state party to CEDAW and a member of the UN. The DEVAW amendment to CEDAW omits any reference to violence against women (Korey, 2001). DEVAW specifically mentions in the third paragraph that one of its objectives is to support and strengthen CEDAW:

Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process.

The DEVAW is mostly binding, upheld, and acknowledged by UN members, and it is reflected in the national laws of the relevant countries. DEVAW is an example of a widespread behavior that is recognized as legal as evidence of an international custom. Even though DEVAW was not created as a treaty, adherence to and observance of it are in accordance with the international legal maxim *pacta sunt servanda*, and as a result, they satisfy the requirements for being general rules of law accepted by advanced civilizations. DEVAW is "*Jus Cogens*" because it is a standard that the world community has adopted and acknowledged. Furthermore, because *POLRI* and *TNI*'s practice of conducting virginity tests infringes on a number of DEVAW requirements, Indonesia is required to abide by it.

Violence against women is defined in Article 1 DEVAW as any sex-based act of violence that causes or is likely to cause physical, sexual, or psychological suffering for women, including threats of such action, coercion, or arbitrarily denying them their freedom, whether occurring in the public or private spheres.

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Then, Article 2 Paragraph 3 of DEVAW specifies that any physical, sexual, or psychological violence perpetrated or approved by the State, regardless of where it takes place, constitutes violence against women.

Based on these articles and in accordance with Lies Gernholtz, Director of Human Rights Watch for Women's Rights, who believes that the virginity test is a form of violence and gender discrimination (Watch), and Indri Afriani Yasin, Operational Director of the Indonesian Gender Research Center, who believes that the virginity test is a form of violence against women and children (D, 2022), the practice of virginity tests carried out by *POLRI* and *TNI* is included. The practice of virginity testing, which is carried out by *POLRI* and *TNI*, comprises violence based on gender differences that causes or may cause physical, sexual, or psychological agony or suffering for women. It is also a kind of violence against women that the State either commits or condones.

According to Article 3 of the DEVAW, women have the right to equal access to and protection of all fundamental freedoms and human rights, whether those rights pertain to the political, economic, social, cultural, civil, or other spheres of life. Among these rights are:

- a. The right to life;
- b. The right to equality;
- c. The right to liberty and security of person;
- d. The right to equal protection under the law;
- e. The right to be free from all forms of discrimination;
- f. The right to the highest standard attainable of physical and mental health;
- g. The right to just and favorable conditions of work;
- h. The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

The practice of virginity tests by *POLRI* and *TNI* constitutes a violation of Article 3 DEVAW because it involves discriminatory treatment, poses a risk to women's personal safety, threatens victims' integrity and their physical and mental well-being, and involves cruel, inhumane, or degrading treatment.

According to Article 4 Letter b of the DEVAW, the state is required to denounce violence against women and may not evade their responsibilities to end it by invoking custom, tradition, or religion. The state must immediately implement a strategy to end violence against women and, while doing so, abstain from using violence against women.

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: Refrain from engaging in violence against women.

Thus, if the Indonesian government permits the *POLRI* and *TNI* to conduct virginity testing, this contradicts Article 4 letter b of the DEVAW.

## **CEDAW**

As a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, Indonesia is required to remove all discriminatory customs and practices, including the practice of virginity testing. Indonesia must also take all efforts necessary to end prejudice against women. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been ratified by Indonesia through Law No. 7 of 1984, Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. CEDAW was ratified at the time because the intended action was a manifestation of state responsibility in accordance with the mandate of the 1945 Constitution (*UUD 1945*), which emphasized that all citizens had the same position before the law and government, therefore all forms of discrimination against women must be eliminated (Irianto, 2006).

CEDAW prohibits discrimination against women, which is defined in Article 1 as any distinction, exclusion, or restriction based on sex that has the effect or purpose of damaging or nullifying the recognition, enjoyment, or exercise, on an equal basis with men, of women's human rights and fundamental freedoms in the political, economic, social, cultural, civil, or other fields. While male police officers and male applicants for the military do not pass the virginity test, the fact that *POLRI* and *TNI* conduct virginity tests on female police officer candidates and female candidates for the military constitutes discrimination against women. Then, pursuant to Article 2 letter d of the Convention on the Elimination of All Forms of Discrimination Against Women, Indonesia must avoid from engaging in acts or practices of discrimination against women and ensure that public authorities and institutions comply with this commitment.

Many times, the CEDAW Committee has urged nations to take the efforts necessary to eliminate cultural practices and stereotypes that continue to promote discrimination against women (Durojaye, 2016). In General Recommendation 31 on Harmful Practices, the Committee notes that harmful cultural

practices, such as virginity testing, are "harmful practices which are all strongly connected to and reinforce socially constructed gender roles and systems of patriarchal power relations and sometimes reflect negative perceptions or discrimination beliefs towards certain disadvantaged groups of women and children, such as individuals with disabilities and albinism" Conclusion: The practice of virginity tests conducted by *POLRI* and *TNI* breaches the rules of CEDAW, particularly Articles 1 and 2, and demonstrates a lack of accountability on the part of Indonesia as a state party for failing to meet its duties under CEDAW.

### ICCPR

Being a signatory to the ICCPR, Indonesia is obligated, among other things, to eradicate all acts that could be construed as torture or cruel, inhuman, or degrading treatment or punishment. Under Legislation of the Republic of Indonesia No 12 of 2005 respecting Ratification of the International Covenant on Civil and Political Rights, Indonesia has ratified the ICCPR.

The ICCPR prohibits the practice of *POLRI* and *TNI* virginity tests, which are degrading and can harm the physical and mental integrity of the victim. Article 7 of the International Covenant on Civil and Political Rights prohibits torture and other cruel, inhuman, or degrading treatment or punishment. No one may be subjected to medical or scientific experiments without their informed consent. Article 7 of the ICCPR seeks to defend the bodily and mental integrity as well as the dignity of individuals. In contrast, the *POLRI* and *TNI*'s practice of administering virginity tests as a requirement for becoming a policewoman or soldier breaches the physical and mental integrity of the prospective policewoman or soldier and is therefore in violation of these requirements.

General Comment on the International Covenant on Civil and Political Rights No. 20 (General Comment 20) elaborates on the meaning of article 7 of the ICCPR, which expressly states that the purpose of the provisions in article 7 of the ICCPR is to protect the individual's physical and mental integrity as well as his or her dignity. Article 7's prohibition applies not only to acts that inflict bodily pain, but also to acts that cause the victim mental anguish (Manusia, 2013). Article 7 of the ICCPR applies not only to acts that cause bodily pain, but also to those that cause the victim mental distress. The practice of virginity testing undermines the physical and mental integrity of victims and endangers the dignity of Indonesian women.

General Comment 20 also states that states parties to the ICCPR are obligated to provide protection to all individuals through legislative and other measures as necessary against acts prohibited by Article 7 of the ICCPR, whether committed by individuals acting in their official capacity, outside of their official capacity, or in their private capacity (*Ibid*). As a signatory to the ICCPR, Indonesia is obligated not to conduct virginity tests and to take appropriate action against those who do so.

### CAT

As a state party to the CAT, Indonesia must prevent cruel, inhuman, and degrading treatment and activities. The Legislation of the Republic of Indonesia Number 5 of 1998 concerning Ratification of the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment has been ratified by Indonesia.

Article 16 of the CAT requires the state to prevent in its territory cruel, inhuman, or humiliating treatment or punishment that does not involve torture where it is carried out by, at the instigation of, or with the consent or tacit consent of a public official or other person in a position. While virginity testing may not be perceived or interpreted as torture, it is cruel, inhuman, and humiliating and is therefore absolutely prohibited by CAT.

The CAT also requires states to take specific measures to prevent cruel, inhuman or degrading treatment as stipulated in the treaty, such as ensuring that education and information regarding the prohibition of cruel, inhuman or degrading treatment or punishment is included in the training of law enforcement personnel, medical personnel, public officials, and other persons who may be involved in the detention, interrogation, or treatment of individuals who have been subdued. Doctors, police, and other relevant employees in Indonesia must be educated to ensure that virginity tests are discontinued. This conforms to Article 10 of the CAT, which states:

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

## CONCLUSION

The international community recognizes human rights as fundamental principles of international law that cannot be disregarded under any circumstances. Indonesia is required to offer legal protection for women and to respect, preserve, and uphold human rights. Article 7 of the UDHR, Article 4 letters d, e, f, and I of DEVAW, Article 2 letters a, b, c, and f of CEDAW, as well as Article 3 and Article 26 of the ICCPR govern this issue precisely. Indonesia has ratified CEDAW via Law Number 7 of 1984 Concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women and ICCPR via Law of the Republic of Indonesia Number 12 of 2005 Concerning Ratification of the International Covenant on Civil and Political Rights; therefore, Indonesia is bound by both and is obligated to do so in good faith. The UDHR and DEVAW are international accords in the form of declarations, hence they cannot be ratified. Nonetheless, Indonesia must still comply with these two declarations. These international legal instruments derive their binding force from Article 26 of the Vienna Convention of 1969 and customary international law, which says that international agreements have binding force.

The practice of virginity tests conducted by *POLRI* and *TNI* violates human rights and numerous principles of international law, both those ratified by Indonesia (CEDAW, ICCPR, CAT) and those not ratified by Indonesia (UDHR, DEVAW). The practice of virginity testing is considered a practice or action that restricts women's rights because it is discriminatory, an insult and a form of violence against women, a violation of privacy, has the potential to harm the victim's physical and mental integrity, and is cruel, inhuman, and/or degrading to women's dignity. *POLRI* and *TNI*'s practice of conducting virginity tests violates Articles 1, 2, and 5 of the UDHR, Articles 1, 2 paragraph (3), 3 and 4 letter b of DEVAW, Articles 1 and 2 letter d of CEDAW, Article 7 of the ICCPR, and Articles 16 and 10 of the CAT.

## REFERENCES

- Amanwinata, R. (2000). Kekuatan Mengikat UDHR 1948 Terhadap Negara Anggota PBB, Khususnya Indonesia. *Ius Quia Iustum*, 14(7).
- Committee on the Elimination of Discrimination against Women and Committee on Rights of the Child. (2014). Committee on the Elimination of Discrimination against Women and Committee on Right, Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices.
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment.
- Convention On the Elimination of All Forms of Discrimination Against Women.
- Declaration on the Elimination of Violence Against Women.
- Dewi, S. (n.d.). Tes Keperawanan Tinggalkan Trauma Calon Prajurit TNI Perempuan. Retrieved from <https://www.idntimes.com/news/indonesia/santi-dewi/tes-keperawanan-tinggalkan-trauma-calon-prajurit-tniperempuan>
- Durojaye, E. (2016). The human rights implications of virginity testing in South Africa. *International Journal of Discrimination and the Law*, 16(4).
- Human Rights Watch. (2014). PBB: WHO Mengutuk 'Tes Keperawanan'. Retrieved from <https://www.hrw.org/id/news/2014/12/01/264950>
- International Tentang Hak-hak Sipil Dan Politik.
- International Covenant on Civil and Political Rights.
- Irianto, S. (2006). Perempuan dan Hukum: Menuju Hukum yang Berperspektif Kesetaraan dan Keadilan. Jakarta: Yayasan Pustaka Obor Indonesia.
- Keputusan Panglima TNI Nomor KEP/920/XI/2020 Tanggal 23 November 2020 tentang Petunjuk Teknis Pemeriksaan dan Uji Kesehatan di Lingkungan Tentara Nasional Indonesia.
- Komisi Nasional Hak Asasi Manusia. (2013). Komentar Umum Kovenan Internasional Hak Sipil dan Politik, Kovenan Internasional Hak Ekonomi, Sosial, dan Budaya. Jakarta: Komnas HAM.
- Maryam, R. (2012). Menerjemahkan Konvensi Penghapusan Segala Bentuk Diskriminasi Terhadap Perempuan (CEDAW) Dalam Peraturan Perundang-Undangan. *Jurnal Legislasi Indonesia*, 9(1).
- Massa, M. D. (2013, August 20). LSM: Tes Keperawanan, Bentuk Kekerasan pada Perempuan. Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 7 Tahun 2016 Tentang Pemeriksaan Kesehatan Penerimaan Bagi Calon Anggota Kepolisian Negara Republik Indonesia. Punishment.
- Sihite, R. (2007). Perempuan Kesetaraan, Keadilan: Suatu Tinjauan Berwawasan Gender. Jakarta: PT. Raja Grafindo Persada.
- Undang-Undang Dasar Republik Indonesia Tahun 1945 (Amandemen ke-4).
- Undang-Undang Nomor 24 tahun 2000 tentang Perjanjian Internasional.
- Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.



- Undang-Undang Nomor 7 Tahun 1984 Tentang Pengesahan Konvensi Mengenai Penghapusan Segala Bentuk Diskriminasi Terhadap Perempuan.
- Undang-Undang Republik Indonesia Nomor 12 Tahun 2005 Tentang Pengesahan Kovenan
- Undang-Undang Republik Indonesia Nomor 5 Tahun 1998 Tentang Pengesahan Konvensi Menentang Penyiksaan Dan Perlakuan Atau Penghukuman Lain Yang Kejam, Tidak Manusiawi Dan Merendahkan Martabat Manusia.
- Universal Declaration of Human Rights.
- Vienna Convention on the Law of the Treaties 1969.
- William Korey. (2001). *NGOs and the Universal Declaration of Human Rights*, New York: Palgrave.
- World Health Organization. (n.d.). Health care for Women Subjected to Intimate Partner Violence or Sexual Violence: A Clinical Handbook.